



**Date:** September 8, 2015  
**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Jina B. Propst, Assistant Director, General Services Department

**Subject:** Proposed sale of various property interests to Lambert Development Hunt Street LLC for the Parkside at Morris Ridge project

### Executive Summary

The City has received an offer from Lambert Development Hunt Street LLC (Lambert) to purchase a variety of real property interests on city-owned parcel # 104848 (the Property), which is located at 501 Foster Street and is part of Durham Central Park. The requested property interests (Property Interests) are as follows:

1. Tract 1 and Tract 2 in fee simple, totaling 2,836 square feet;
2. A four (4) foot-wide air rights easement in the Hunt Street right-of-way;
3. A four (4) foot-wide air rights easement facing Durham Central Park;
4. A five (5) foot-wide building foundation easement;
5. A twenty (20) foot-wide fire separation easement;
6. A twenty-five (25) foot-wide temporary construction and grading easement.

Lambert has offered to pay the City \$209,396.00, which includes payment for the appraised value of these Property Interests, compensation for anticipated tree loss resulting from proposed construction, and a premium to be applied to the City of Durham Affordable Housing Holding Fund, as illustrated below.

Item	Amount
Property Interests	\$152,396.00
Tree Loss Anticipated Due To Construction	\$22,000.00
City of Durham Affordable Housing Holding Fund	\$35,000.00
<b>Total</b>	<b>\$209,396.00</b>

Lambert is under contract to purchase parcel # 104855, which is located at 400 Hunt Street and is adjacent to Durham Central Park. Using both parcel # 104855 and the Property Interests Lambert proposes to acquire from the City, Lambert plans construction of a building containing approximately 35 residential condominium units with two levels of underground parking (the Project).

The City proposes to sell the Property Interests as surplus pursuant to the upset bid procedure set forth in N.C.G.S. §160A-269 and City of Durham Charter § 86.3.

### Recommendation

The General Services Department recommends that City Council 1) declare the Property Interests located at 501 Foster Street surplus; 2) propose to accept from Lambert Development Hunt Street LLC compensation totaling \$209,396.00, part of which is for

purchasing the Property Interests enumerated in the Executive Summary, all of which are shown on the plat entitled, "Redevelopment Plat for Lambert Development Hunt Street LLC," which will be recorded at the Durham County Register of Deeds if this transaction is completed; 3) authorize allocation of funds as enumerated in the Financial Impact section; 4) advertise for upset bids pursuant to the procedure set forth in N.C.G.S. §160A-269; 5) authorize the City Manager, pursuant to Section 86.3 of the City Charter, to accept the bid from the highest qualifying bidder at the conclusion of the upset bid procedure; and 6) authorize the City Manager or the Mayor to convey the Property Interests via non-warranty deed.

### **Background**

Lambert is under contract to purchase parcel # 104855, which is located at 400 Hunt Street and is adjacent to Durham Central Park. Using both parcel # 104855 and the Property Interests Lambert proposes to acquire from the City, Lambert plans construction of a building containing approximately 35 residential condominium units with two levels of underground parking. Lambert requires the aforementioned Property Interests from the City as part of the Project.

At City Council's work session July 23, 2015, Lambert presented an overview of the Project, including how integral the Property Interests are to the Project. As part of that presentation, Council expressed a strong desire for the Project to benefit affordable housing in the downtown area. After considering several options, Lambert has offered to pay \$209,396.00, which includes payment of \$152,396.00 for the Property Interests, compensation of \$22,000.00 for anticipated tree loss resulting from construction of the Project, and a premium of \$35,000.00 (\$1,000.00 per proposed unit) which the City will apply to the City of Durham Affordable Housing Holding Fund.

### **Issues and Analysis**

The Property is being sold "as is," with the City making no representations or warranties. City Council's approval of the recommendations set forth above will authorize Real Estate staff to begin the upset bid procedure upon advertisement of Lambert's offer.

#### **Synopsis of the upset bid procedure**

The City may solicit and receive bids to purchase property. A five percent (5%) deposit must be submitted with the bid. When a bid is made and City Council proposes to accept it, the bid is advertised in a local newspaper. This begins the upset bid procedure. The notice contains a general description of the property, the amount and terms of the bid, a notice that within 10 days, any person may raise the bid by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder, the date and time by which upset bids should be received, and the location to submit bids.

This procedure is repeated until no further qualifying upset bids are received, at which time the City Manager may either accept the bid and sell the property to the highest qualifying bidder or choose to not accept the bid.

A bid submitted by any person owing delinquent City-County taxes or assessments will not be accepted. Closing will be held within 60 days of the City's acceptance of the bid.

#### Effects of conveying the Property Interests on use of the Property as a public park

Conveying Tract 1 of the Property in fee simple to Lambert will have a minimal effect on current use of the Property as a public park. After a considerable amount of consultation with the City's Department of Parks and Recreation (DPR), Real Estate staff determined that the impact this conveyance will have on use of the Property is minimized because this area of the park is not used for programmed public activities.

This conveyance will, however, affect the trees that are located on Tract 1, so Lambert's offer includes compensation for \$22,000.00 for the tree loss anticipated in connection with construction of the Project. Lambert originally offered to plant new trees to compensate for those that will be taken down during construction. However, discussions with both DPR and the Urban Forestry Division of the General Services Department indicate that Lambert providing the funds instead would give staff maximum flexibility in determining what the most appropriate species of tree are and where best to plant them. Staff therefore recommends to the City Council that donating the tree loss portion of the proceeds to the local non-profit organization Keep Durham Beautiful (KDB) to hold on behalf of DPR is an appropriate way to ensure that the funds are used to beautify Durham's parks on a planting schedule commensurate with the needs of the chosen species of trees.

Conveying Tract 2 of the Property in fee simple will have a minimal effect on current use of the Property as a public park. The City will retain an access easement over this tract so that the public can continue to access the Property on foot, which is the existing exclusive means of access from Hunt Street. However, conveying Tract 2 in fee simple will allow vehicular access to the parking garage of Lambert's proposed building.

The proposed fire separation easement will not affect current use of the Property, but granting the easement will preclude the City from ever building any permanent structures in the easement area.

The proposed air rights easements are necessary so that Lambert can construct balconies on the proposed building. One set of balconies will be located 11-18 feet above the sidewalk in the Hunt Street right-of-way. Lambert will increase the sidewalk width in front of the proposed Project from the existing 6 feet to a maximum of 12 feet, and the proposed balconies will project outward over the sidewalk no more than four (4) feet. The other set of balconies will be located above the proposed fire separation easement. The City will not be able to use either the Hunt Street air rights easement or the fire separation easement for permanent structures. Therefore, the balcony air rights easements will have minimal impact on current use of the Property.

The proposed foundation easement is needed to accommodate the size of the building Lambert plans to erect and will be located in the proposed fire separation easement, an area that the City will not be able to use for permanent structures. The foundation easement will therefore have a minimal impact on current use of the Property.

Granting the proposed construction and grading easement will have a minimal effect on current use of the Property because the easement is temporary and will terminate when construction of the proposed building is complete.

Real Estate has received an updated appraisal from Analytical Consultants that values the Property Interests at \$152,396.00. Lambert has presented a revised offer to the City for \$209,396.00, which includes the appraised value to purchase the Property Interests,

\$22,000.00 for anticipated tree loss, and \$35,000.00 to be applied to the City of Durham Affordable Housing Holding Fund.

### Alternatives

City Council could reject Lambert's offer to begin the upset bid procedure and instead direct Real Estate staff to solicit bids through an advertisement or to use one of the other public sales procedures, such as N.C.G.S. §160A-268 (sealed bids), pursuant to which the Property Interests would be advertised at least once for 30 days before the bids are opened.

City Council could elect not to delegate authority to the City Manager pursuant to City Charter Section 86.3 but instead direct Real Estate staff to return with a report at the conclusion of the upset bid procedure for City Council to either accept a bid or reject all bids.

### Financial Impact

The City will receive compensation from Lambert totaling \$209,396.00. Staff recommends donating the portion of compensation paid for anticipated tree loss due to construction of the Project, \$22,000.00, to KDB. Donating the proceeds to KDB enables KDB and DPR to apply those funds directly to Durham's park and recreation facilities.

Staff also recommends that \$35,000.00 of the sale proceeds be deposited into the City of Durham Affordable Housing Holding Fund.

The remainder of the proceeds, \$152,396.00, will be deposited in the Parks and Recreation Department's Fund for Park Renovations (Account 3000H000-661100-CH410).

Sale of 2,836 square feet of the Property in fee simple will also generate tax revenue.

Lambert will be responsible for payment of all closing costs.

Easement	Size (SF)	Land Value (Per SF)	Value	% Compensation	Time (Years)	Easement Value
4' Permanent Air Rights (Hunt Street)	539	\$35	\$18,865	100%	Permanent	\$18,865
25' Temporary Construction/Grading	2,489	\$30	\$74,670	2.5%	2	\$3,733
20' Fire Separation	1,991	\$30	\$59,730	75%	Permanent	\$44,798
<b>Total</b>						<b>\$67,396</b>

Value Conclusions	Value	Value/SF (Rounded)	Date of Valuation
2,836 SF Parcel of Unencumbered Land	\$85,000	\$30	August 21, 2015
Value of Easements	\$67,396		August 21, 2015
2,836 SF Parcel of Land with Easements	<b>\$152,396</b>		August 21, 2015

### SDBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.

**Attachments**

Offer letter from Lambert Development Hunt Street LLC

Aerial view of parcels' locations

Drawings showing the requested fee simple tracts and easements

Appraisal dated September 1, 2015